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November 13, 1998

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
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FEDERAL COMMUNICATIONS COMMISSION  
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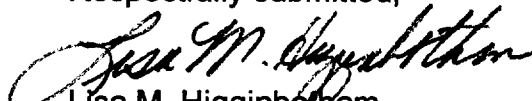
RE: Petition for Clarification of Commission's First Report and Order  
Issued in WT Docket No. 96-86

Dear Ms. Salas:

On behalf of the Commonwealth of Pennsylvania (hereinafter the "Commonwealth"), and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, enclosed herewith for filing are an original and eleven (11) copies of the Commonwealth's Petition for Clarification of the Commission's First Report and Order released on September 29, 1998 and appearing in the Federal Register on November 2, 1998. See The Development of Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, 63 Fed. Reg. 58645 (November 2, 1998).

Kindly stamp and return to this office the enclosed copy of this filing designated for that purpose. You may direct any questions concerning this material to the undersigned.

Respectfully submitted,

  
Lisa M. Higginbotham

Enclosures

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List A B C D E

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
The Development of Operational, )  
Technical and Spectrum Requirements )  
For Meeting Federal, State, and Local )  
Public Safety Agency Communication )  
Requirements Through the Year 2010 )  
 )  
Establishment of Rules and Requirements )  
For Priority Access Service )

WT Docket No. 96-86

**PETITION FOR CLARIFICATION OF  
THE COMMONWEALTH OF PENNSYLVANIA**

The Commonwealth of Pennsylvania (hereinafter, the "Commonwealth"), pursuant to 47 C.F.R. § 1.429, through its attorneys, hereby files this Petition seeking clarification of certain rules adopted by the Commission in its First Report and Order in this proceeding.<sup>1</sup> In this order, the Commission adopted service and licensing rules for the newly-reallocated public safety spectrum at 746-776 MHz and 794-806 MHz (hereinafter, the "700 MHz Band"). Specifically, the Commonwealth seeks clarification of certain rules regarding the regional planning process for this band. In light of the deadlines imposed on states wishing to exercise the opt-out provisions and the numerous steps this process will likely entail, the Commonwealth requests that the

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<sup>1</sup> The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98-191 (released September 29, 1998) ("First Report and Order").

Commission act on this Petition on an expedited basis.

The Commonwealth commends the Commission for its efforts to address the communications needs of the public safety community by making available spectrum in the 700 MHz Band. The Commonwealth is also encouraged by the Commission's efforts to recognize the unique needs of states in developing rules for the Regional Planning Committee (RPC) process for this band. In an effort to ensure that states are able to benefit from the opt-out provisions as the Commission intended, the Commonwealth seeks clarification on two subjects pertaining to the procedures for invoking those provisions: the meaning of the term "consensus" and the operation of various deadlines.

As to the first, in the First Report and Order, the Commission adopted a regional planning process for assignment of general use frequencies in the 700 MHz Band.<sup>2</sup> In response to concerns raised by the Commonwealth and other commenters regarding the unique problems states have faced in the 800 MHz RPC process, the Commission permitted RPC members from a state that either is included in multi-state regions or has portions of its geographic boundaries included in more than one region to "opt-out" of such regions by either (1) forming a new RPC that would correspond to that state's geographic boundaries, or (2) joining a single RPC instead of continuing to be divided among several regional planning committees.<sup>3</sup> To exercise either option, the Commission required that RPC members within the state reach a "consensus

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<sup>2</sup> First Report and Order, at ¶ 40.

<sup>3</sup> Id., at ¶ 80.

decision."<sup>4</sup>

Neither the new rules nor the text of the First Report and Order defines what is meant by the term "consensus." Efforts to obtain clarification informally from the Public Safety and Private Wireless Division staff generated different interpretations, with one staff member suggesting that the Commission intended the dictionary definition. But Webster's Third New International Dictionary, for example, provides numerous definitions for the term, including "general agreement: unanimity," which, if applied, would require agreement by each RPC member from the relevant state; another meaning is "collective opinion: the judgment arrived at by most of those concerned,"<sup>5</sup> which, if applied, would seem to require only a simple majority. Other dictionaries also provide various other definitions for this term.<sup>6</sup>

Due to the ambiguity of this term, the Commonwealth urges the Commission to clarify the meaning of "consensus" with respect to the "opt-out" provisions adopted in the First Report and Order. In this regard, the Commonwealth urges the Commission to interpret this term as requiring only a simple majority of the RPC members from the state seeking to exercise the "opt-out" option. This is the only workable interpretation as it will allow a state to opt-out of its current RPC if the majority of those RPC members from the state agree. A requirement that the state obtain agreement from

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<sup>4</sup> Id. at ¶ 85.

<sup>5</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, at 482 (1971).

<sup>6</sup> See e.g., THE AMERICAN HERITAGE COLLEGE DICTIONARY, at 296 (3rd ed. 1997) (defines "consensus" as "[a] view or stance reached by a group as a whole or by majority will.")

every member would place a significant burden on states, particularly given the number of RPC members in a particular state and the short-time frame in which the Commission has required that a consensus be reached. Moreover, a requirement for complete agreement, or even a "supermajority," could give significant power to one or a few members to essentially veto a decision by the majority of entities that believe that exercise of the opt-out option is in the state's best interest. Accordingly, the Commonwealth urges the Commission to define the term "consensus decision" as requiring agreement by a simple majority of those RPC entities in the state seeking to exercise the opt-out option.

Second, the Commission should clarify the specific date by which a state must notify the Commission of its decision to opt-out of its present RPCs.<sup>7</sup> The First Report and Order requires that states wishing to opt-out of regions "to form a new region defined by geographic boundaries must do so within 120 days of the effective date of this First Report."<sup>8</sup> The Commonwealth seeks three specific clarifications regarding this requirement. First, the discussion of the deadline refers only to the option of creating a new RPC based on the state's geographic boundaries. The Commonwealth seeks clarification as to whether this deadline also applies to a state that wishes to join

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<sup>7</sup> The Commonwealth understands that the Wireless Telecommunications Bureau (Bureau) intends to announce the specific deadline for exercising the opt-out option. First Report and Order, at n.219. In this regard, the Commonwealth requests that the Bureau clarify this issue on an expedited basis so that states wishing to take advantage of this option will know the relevant deadlines for doing so at the earliest possible time.

<sup>8</sup> First Report and Order, at ¶ 85.

only one of the RPCs encompassing portions of the state.

Second, according to the First Report and Order, the deadline is triggered by "the effective date of this First Report."<sup>9</sup> The ordering clauses, however, do not provide for an effective date for the Order. For example, does the above-quoted excerpt refer to 120 days from the effective date of the rules (i.e., 120 days from January 4, 1999) or some other date?

Finally, there appears to be a potential conflict between the deadline by which a state must notify the Commission of its opt-out decision and the deadline for notifying the Commission of the names, addresses and telephone numbers of conveners. The First Report and Order requires that "the current regional chair or the state, if applicable, appoint a local convener who will be responsible for organizing and publicizing" the first meeting of the new RPC, and that the name, address and telephone number of the convener be provided to the Bureau within 120 days from the release date of the First Report and Order.<sup>10</sup> However, if the effective date of the First Report and Order is January 4, 1999 (i.e., the same date as the effective date of the rules), then the deadline for notifying the Bureau of a state's convener of the newly-formed RPC would occur before the deadline for exercising the opt-out option for creation of the new RPC. Consequently, a state could find itself required to comply with the convener notification deadline even before it has reached a consensus decision.

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<sup>9</sup> Id.

<sup>10</sup> Id. at ¶ 86.

In conclusion, the Commonwealth requests the Commission to clarify these issues on an expedited basis.

Respectfully submitted:

COMMONWEALTH OF PENNSYLVANIA



Thomas J. Keller



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November 13, 1998

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 13th day of November, 1998, I caused copies of the foregoing document to be served by hand delivery to the following:

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